R E M A R K S

Claims 1 through 40 are in the application. Claims 2-6, 10-12, 15-19, 28-34, 36-38 and 40 stand withdrawn from consideration. Claims 1, 20, 35 and 39 are the independent claims now under consideration. No new matter has been added. (Indeed, no amendments are being made in this paper.) Reconsideration and further examination are respectfully requested.

Claim Rejections – 35 USC § 103

Claims 1, 7-9, 13-14, 20-27, 35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht et al., U.S. Patent Application Publication 2002/0194115 (see PTO-892, Ref. A) in view of Securities Exchange Act of 1934, Rules 11Ac1-5 and 11Ac1-7 (see PTO-892, Refs. U and V).

Claim 1 is directed to a "method", which includes "identifying an option limit order", where the option limit order "includ[es] information identifying a customer, information identifying a desired option, and information that indicates a limit price for said option limit order". The method of claim 1 also includes "receiving a substantially real time feed of option market data" and "using the option market data in real time to identify at least one of a trade-through transaction relevant to said option limit order and a trade-at transaction relevant to said option limit order". Claim 1 specifies that the "identifying" step "occur[s] at a time prior to said option limit order being fully executed, deleted or canceled".

In the current Office Action[1], the Examiner continues to assert that Ref. V teaches using option market data in real time, even though applicants demonstrated in the prior Response[2] that Ref. V does not contain this disclosure. In fact, the Rule in question does not require that a trade-through be disclosed until the order in question is settled (i.e., well after execution).

Implicitly, the Examiner appears to recognize that his characterization of Ref. V as stated in the current rejection is not correct. The Examiner does so by proposing at page 3 of the current Office Action to modify Ref. V by identifying trade-throughs prior to completion. There

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[1] At page 5, last paragraph.

[2] Filed March 28, 2008—see page 3, lines 10-17 of that Response.

are at least three problems with the Examiner's statement on this point. First, this is effectively a new ground of rejection, and should not have been made final. Second, even this proposed modification falls short of what is actually recited in claim 1, namely identifying a trade-at or trade-through prior to <u>execution</u> of the relevant order. Third, and most significantly, it is not proper to formulate an obviousness rejection based on what "could have" been done[3]. Rather, the binding judicial precedent[4] holds that there must be an "apparent reason" taught by the prior art for making the proposed modification. The Examiner has failed to meet this standard.

In view of the above, and the Examiner's failure to properly address applicants' previous arguments, it is respectfully submitted that the rejection of claim 1 should be reconsidered and withdrawn.

Since claims 7-9, 13 and 14 are dependent on claim 1, those claims are believed to be patentable on the same basis as claim 1. However, applicants will also make the following additional comments as to the rejections of certain of the dependent claims.

The Examiner's discussion of claim 7[5] is similarly schizophrenic. The Examiner "disagrees" with applicants' point that Nordlicht has no teaching about trade-at or trade-through data, but then the Examiner implicitly acknowledges that applicants are correct, by citing the SEC documents with respect to their disclosure of identifying trade-throughs.

But what is most pertinent about the rejection of claim 7 is that Nordlicht cannot, as asserted by the Examiner, teach comparing trade-at or trade-through data with fulfillment data. In this respect, applicants pose a question to the Examiner: <u>How can Nordlicht teach comparing tabulated trade-at or trade-through data with fulfillment data, when Nordlicht does not even mention trade-at or trade-through data?</u>[6] Clearly this deficiency in Nordlicht cannot be remedied by the teachings in Ref. V of identifying trade-through transactions.

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[3] In a sense, *any* invention, no matter how novel and unobvious, teaches something that previously "could have" been done.

[4] *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1729 (2007).

[5] Page 3, Section 3 of the current Office Action.

[6] In more general terms this question can be phrased as, How can a reference disclose comparing A with B when it makes no mention of A?

The Examiner's "Response" concerning claim 14 is also lacking in cogency. Killing an order is simply different from disregarding a trade-through transaction. Disclosure of the former would not lead those who are skilled in the art to arrive at the latter. Moreover, although Ref. V arguably discloses "disregarding" certain trade-throughs[7] (i.e., not reporting them to the customer), this is not done in response to a market condition, as recited in claim 14.

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Claim 20 is directed to a "method", which includes "receiving a plurality of option limit orders". Claim 20 specifies that "each of said option limit orders includ[es] information identifying a respective desired option, and information that indicates a respective limit price for said option limit order". The method of claim 20 further includes "tabulating at least one of trade-through data and trade-at data for the plurality of option limit orders", "tabulating fulfillment data for the plurality of option limit orders" and "comparing the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data".

Regarding claim 20, the points applicants made hereinabove concerning claim 7 are also pertinent to this claim. Applicants will additionally remark that they do not understand how a price can be compared to an expiration date[8], nor how this is relevant to what is actually recited in claim 20.

The above remarks concerning claim 20 are equally applicable to the other independent claims under consideration, namely claims 35 and 39, which are submitted as patentable on the same basis as claim 20. Claims 21-27 are dependent on claim 20 and are submitted as patentable on the same basis.

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Because claim 1 is allowable, and is generic to withdrawn claims 2-6 and 10-12 (those claims being dependent on claim 1), it is requested that claims 2-6 and 10-12 should also be allowed.

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[7] See page 10, first full paragraph, of Ref. V.

[8] See page 4, lines 3-4 of the current Office Action.

CONCLUSION

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-3460.

Respectfully submitted,

 July 17, 2008
Date

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